

SPECIAL CIVIL APPLICATION No 7867 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? No @@

5. Whether it is to be circulated to the Civil Judge?
No

Mr.L.R.Poojari, A.G.P. for Respondent No. 1, 2, 3

ORAL JUDGEMENT

1. The petitioner, through this writ petition, under Article 226 of the Constitution of India, has challenged the detention order dated 14.8.1998 passed by the Commissioner of Police, Ahmedabad City, under Section 3(2) of the Prevention of Anti-Social Activity Act (for short "PASA") and has prayed for quashing of the said order and his immediate release from illegal detention.

2. It appears from the grounds of detention that from three registered cases against the petitioner under the Bombay Prohibition Act as well as from the statements of two confidential witnesses the detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed.

3. Learned Counsel for the petitioner has challenged the impugned order of detention only on one ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and at the most these activities can be called as activities prejudicial for maintenance of law and order and for such activities the preventive detention was uncalled for. The contention to the contrary of the learned A.G.P. is that the activities of the petitioner were prejudicial for maintenance of public order.

4. From the contention of the learned Counsel for the petitioner it appears that subjective satisfaction of the detaining Authority that the petitioner is a bootlegger has not been challenged nor it could be challenged because registration of three cases under the Bombay Prohibition Act as well as the statement of two confidential witnesses furnished ample material to the detaining Authority that the petitioner is a bootlegger. This subjective satisfaction, therefore, hardly requires any interference in this writ petition.

5. A bootlegger, however, cannot be detained simply because he is engaged in bootlegging business or activity. He can be detained only when his activities are found prejudicial for maintenance of public order. The three registered offences under the Bombay Prohibition Act are still under investigation and whatever breaches were committed by the petitioner on

those three occasions were sufficiently taken care of by the Authority under ordinary law, viz. under the Bombay Prohibition Act. Nothing is disclosed in the grounds of detention that on those occasions the petitioner created situation prejudicial for maintenance of public order, nor is there any allegation that the petitioner caused obstruction in the process of search, seizure and arrest of the petitioner. Thus, these registered offences could not be pressed in service for coming to the conclusion that the activities of the petitioner were prejudicial for maintenance of public order on those three occasions.

6. Then remains the statements of two confidential witnesses which are nothing but usual parrot like repetition of incident by the two witnesses in number of cases which have come for scrutiny before this Court. In one case the witness has stated that on the suspicion that he was police informer he was beaten in public and knife was shown to him and on his alarm persons collected and they were also chased by the petitioner showing knife to them. No knife injury was caused either to the witness or to a persons who collected at the spot. If some disturbance took place on that occasion it cannot be said that situation prejudicial for maintenance of public order arose on account of which the petitioner could be preventively detained. That incident was nothing but a situation prejudicial for maintenance of law and order for which ordinary remedy under the ordinary criminal law should have been taken, but the witnesses had no courage to approach the police and no action under the Criminal law was taken.

7. In second incident there was also no improvement over previous case. Here the petitioner was alleged to have asked the witnesses to keep certain quantity of liquor with him and on his refusal to oblige the petitioner that he was beaten in public and knife was shown to him and the persons who collected to save the witnesses were also chased by the petitioner showing knife to them. Again no injury was caused by knife either to the witnesses or to the person who collected at the spot. Such incident on its face value cannot be considered to have created situation prejudicial for maintenance of public order.

8. Thus, from the material on record it is clear that the activities of the petitioner were not prejudicial for maintenance of public order and as such the impugned order of detention has become illegal. It has therefore to be quashed.

9. The writ petition, therefore, succeeds. The impugned order of detention dated 14.8.1998 is hereby quashed. The petitioner shall be released forthwith from the custody unless wanted in some other case.

sd/-

Date : April 01, 1999 (D. C. Srivastava, J.)

sas